

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-7476

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-7476

NEWBURGER, LOEB & CO., INC. as Assignee of Claims of
David Buckley and Mary Buckley,

Plaintiff-Appellant-Cross-Appellee,
-against-

CHARLES GROSS, MABEL BLEICH, GROSS & CO. and JEANNE
DONOGHUE,

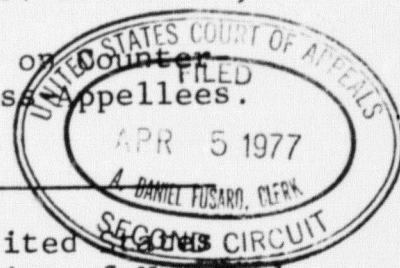
Defendants-Appellees-Cross-Appellants,
and

NEWBURGER, LOEB & CO., a New York Limited Partnership,
ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, RICHARD D.
STERN, as Executors of the Estate of Leo Stern, ROBERT
L. STERN, RICHARD D. STERN, JOHN F. SETTEL, HAROLD J.
RICHARDS, SANFORD ROGGENBURG, HARRY B. FRANK and JEROME
TARNOFF, as Executors of the Estate of Ned D. Frank,
FRED K. VINE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE,
ROBERT S. PERSKY, FINLEY, KUMBLE, WAGNER, HEINE, UNDER-
BERG & GRUTMAN, a Partnership (formerly known as Finley,
Kumble, Underberg, Persky & Roth and Finley, Kumble,
Heine, Underberg & Grutman) and LAWRENCE J. BERKOWITZ,

Additional Defendants on Counter-
claims-Appellants-Cross-Appellees.

Appeal from a Judgment of the United
District Court for the Southern District of New York

REPLY BRIEF
OF ADDITIONAL DEFENDANT ON COUNTERCLAIMS-
APPELLANT-CROSS-APPELLEE PAUL D. RISHER, PRO SE



In my initial brief, I stated that I had done nothing wrongful and was incorrectly found to be part of a conspiracy that had "a deliberate plan ... to injure Gross, Bleich and Donoghue as part of their efforts to take over a new operation on a shoestring and directly enrich themselves" (Pl. 525). The brief submitted by Mr. Mandel, the attorney for defendants Gross, Bleich and Donoghue, does not cause me to change my contention that I did nothing wrongful.

In this, my reply brief, I will:

1. Demonstrate that Defendants' brief is incorrect about many facts regarding me.
2. Show that it was not the intent of the partnership to bestow title to the "in kind" securities to Mr. Gross or any other partner.
3. Show that Mr. Gross' capital account was correctly valued by Peat Marwick despite argument to the contrary in

Defendants' brief.

INTRODUCTION

Through the adroit use of pejorative comments and hyperbole, Mr. Mandel has very ably, thus far, incorrectly convinced the Court that the reorganization of Newburger, Loeb was sinister and unfair and that I was a part of a conspiracy. For example, he says when speaking about Kayne, "in order to manipulate matters so that he and a few friends could get control of the business, and its \$4,000,000 to \$5,000,000 of assets for pennies" (MB^{*}-9). First, whatever assets there were, which is in dispute, were burdened by an even larger amount of total liabilities. Second, the stock was not acquired for "pennies", but for 10,000 dollars each from Kayne, Muh and me, and proportionate amounts from other common shareholders. Third, the book value of the stock we received was substantially negative (A2855, 2856), meaning in the ordinary accounting convention that it was worth less than what we paid for it.

The brief on behalf of Gross, Bleich and Donoghue

* MB will be used to designate references to Mr. Mandel's Answering Brief.

is replete with references to "debt forgiveness." Never is there any mention that of the 29 signatories to the transfer agreement who were associated with the partnership, 18 had positive capital positions totalling \$3,997,264. Of the 11 who had deficits totalling \$1,485,639 more than \$900,000 was made up. Thus 29 entities, represented by more than a dozen law firms, having approximately \$4.8 million at risk, agreed to the transaction. Gross with \$337,921 (under the disputed Lauterbach formulation), Bleich with \$75,000 and Donoghue with \$75,000 -- totalling among them approximately \$480,000 -- represented by two law firms, did not agree. It is a distortion of the facts to argue that debt forgiveness was the single most important factor in this transaction and never to mention that a majority in interest and number received no debt forgiveness. Furthermore, if the Lauterbach adjustments are accepted as correct, there was no debt forgiveness at all (see my initial brief pp.32-38).

The brief on behalf of Gross, Bleich and Donoghue says, "There was a very brief period during early December, 1970, when Risher, in a spasm of greed, tried to

oust Kayne...." (MB-82). The record of my actions and testimony in this matter does not entitle Mr. Mandel to make such an inflammatory statement.

Several other substantive errors regarding me were made in defendants' answering brief that I will detail in the section immediately following.

I

DEFENDANTS' BRIEF IS INCORRECT
ABOUT MANY FACTS REGARDING ME.

Defendants' answering brief says, "Under the proposal agreement Kayne, Risher and Muh for an investment of \$10,000 each would each receive 26% of the common stock of the new corporation." (MB-14). The record shows that we were to each receive 16% of the common stock (A2856, 2873). Given the overall tone of defendants' brief, questions are raised about whether such a mistake is merely typographical.

The same paragraph speaks of our having control of the corporation's "\$5,000,000 pool of capital." The corporation's actual balance sheet was never submitted in evidence, and the point neglects that there was an even greater amount

of total creditor liabilities, and of the capital more
*
than \$4,000,000 had to be repaid under the terms of the
Transfer Agreement (E38-101). More than half of the
capital requiring repayment was repaid.

In what is apparently an attempt to incorrectly
hold me in a conspiracy, defendants' brief says, "As it
happened, Gross' assessment of the situation was entirely
correct. Kayne, Muh, et al. made a killing...." The
"et al" does not include me. The record clearly shows
that I have not sold any shares of Newburger and have
lost money as a result of my Newburger stock ownership
(A2729).

Again, defendants' brief says, "Finally, Mr.
Risher was caught out in charging a 1971 accounting fee
against 1970 results.... However, Risher also set up a
reserve in the 1970 figures for the 1970 audit fee."
(MB-113). Nowhere does the record say that I directed
these accounting treatments. Defendants make much of
the fact that Peat Marwick originally directed their
letter requesting instructions on various items to me

* The Senior Subordinated Loan, the Subordinated Loans,
and the Class A Preferred Stock all required repayment.

(E1038). I have no control over who writes me. It was not unreasonable for Peat Marwick to write me. It is admitted that Robert Muh and I essentially operated the business in behalf of the Partnership, clearing or turning over to the Partnership all important decisions until the reorganization could take place (Risher brief pp.7). The record shows that I turned this letter over to the Partnership and the answer came from Robert Newburger, a general partner and member of the executive committee (E1040). The testimony to which defendants' brief refers (A2825, 2826) is as follows:

"Q Let me ask a leading question.

Does that accrual represent the expense of the audit?

MR. MANDEL: I object.

THE COURT: No, I will permit him to try to refresh the witness' recollection, he having said he doesn't know anything about it.

Let's see if his recollection can be jogged. Overruled, go ahead.

A What the number means is that the accountants were going to charge us more than we had been allowing for directors (sic) of the year, and we had under-accrued the

amount of their fee and this is their way of putting it on the books that -- tell us politely how much we are going to owe them.

MR. MANDEL: That's inconsistent with the statement on the --

THE COURT: Mr. Shaw, let me look at the statement.

(Document handed to the Court.)

THE COURT: Mr. Mandel seems to have his point well taken in that this was a 1971 expense that was being set up as a reserve in 1970.

MR. MANDEL: Yes, even though the prior years had been taken in 1970. In other words, it is what accountants call a double debt.

MR. SHAW: Mr. Mandel can ask his questions. I'd like to move along.

THE COURT: Mr. Risher, I think, will acknowledge what I said, that expenses would not have been incurred until 1971.

THE WITNESS: Right, I agree with you."

Am I "caught out in charging...." when I did not do the charging, and I agree with defendants' position? Indeed, Mr. Mandel argued several times on the record (A2804-2829) that I should not even be permitted to testify on the accounting treatments.

Defendants' brief states that, "Silverman testified ... that the financial figures presented by the New Team understated assets. He reached this conclusion by comparing the financial figures which were presented by the New Team in December with the subsequent audited statements of Peat, Marwick & Mitchell" (MB-15). Defendants' brief is incorrect. Silverman testified that the comparison he made was between the unaudited November and December balance sheets. Whether the New Team is in fact the correctly attributed source is arguable, but the point is the balance sheets used in his comparison both came from the same source. The transaction closed on the basis of the December 31, 1970 balance sheet (E88, 89), which Silverman viewed as more correct and confirmed by his later viewing of the Peat Marwick statement. Silverman testified as follows (1967, 1968):

"THE WITNESS: So that either taking the October 31st statement adjusted to November 27th, adjusted in layman's language, not accounting language, or the November 27th, there was a net worth of 1,350,000 roughly.

However, the financial statement attached to the agreement which was the

financial statement attached on or about February 11 but dated as of December 31st, one month later, something which I didn't see too much later, showed a net worth of \$1,877,000, an increase of roughly \$500,000.

In my judgment, when I reviewed these, it was inconceivable to me that it was possible for the net worth to have gone up if the financial statements given to me previously were true.

Now, later Exhibit 17 in the arbitration proceeding I saw was the Peat, Marwick closing financial statement for the partnership. This was an audited statement. The first audited statement that I saw.

It showed a net worth of \$1,653,000, still \$300,000 more than what we had been told in the meetings of December and January."

Since the source of the November and December statements was the same and the December statement was used in the closing, it seems disingenuous for Mr. Silverman to imply that there was purposeful falsification of financial statements. This point is further buttressed when Mr. Silverman's own notes of the December 10, 1970 meeting, (which had only the October statement available) are examined, and it is seen that Mr. Silverman and the numerous other participants in this meeting were told that the re-

coveries, which caused the increases in net worth referred to by Mr. Silverman, were expected (E667).

His handwritten notes say:

"If N-L remains a viable entity, there is a substantial recovery potential. Firm trying to search & recover what W.E.H.* is missing. Search team talking in terms of \$1 million. Optimistic. Takes time & depends upon continuing name of N-L. Very important that firm make street collections in name of N-L.

Also there are claims against N-L that will be discovered. Probably a net + to NL of \$200,000."

For Mr. Silverman to profess surprise is unexplainable as I testified (A2787-2793). It also seems less than candid for defendants' brief to say that "Arthur Silverman was drawn into this negotiation late, without adequate background...." Mr. Silverman's firm, Golenbock & Barell, had been counsel to Charles Gross since 1960 (A1666) and the general counsel to Newburger, Loeb since September, 1969. Mr. Silverman himself had been doing litigation work for Newburger from October, 1969 to November 11, 1970 (A1554, 1597, 1787). The negotiation leading to this transaction began subsequent to November 17, 1970

* W.E.H. is W.E. Hutton, who took over the clearing activities for Newburger.

under the impetus from the New York Stock Exchange (E1).

Defendants' brief says, "... Risher stated stated that if a mutual accomodation was reached, Gross would be permitted to have his trading job with Rafkind & Co. (E734, 735)." (MB-121). There is no such statement by me in the record. The referenced exhibit, which are handwritten notes taken by Arthur Silverman in a meeting on February 5, 1971, discloses the following:

E

(734) Risher - trading w/Rafkind for CG.

E

(735) Risher - The point - CG has employment opportunities w/o Capital

I testified that my comments that engendered the notes were as follows (A2864, 2865):

"Q Can you tell the Court what you said on February 5th with respect to Rafkind?

A Yes. As I recall it, Mr. Mandel had indicated in this meeting that Mr. Gross needed and wanted cash so he could trade. And at that point in time I thought Mr. Gross was going to work for Rafkind and Company and I made a comment, which is noted here, that Mr. Gross is trading with Rafkind.

And apparently Mr. Mandel or someone did not understand what I meant by that

statement, because later on there is my comment that says, "The point. Charles Gross has employment opportunities without capital." And the meaning of that was that Mr. Gross was going to be trading for Rafkind and Company and he did not need the capital that Mr. Mandel was saying that he needed.

Q Did you say anything at this meeting to the effect that you were going to withhold Mr. Gross' capital so that he couldn't trade at Rafkind and so that he would be injured in any way?

A No, sir."

My testimony was not contradicted. Mr. Mandel cross-examined me at length on this point (A3020-3025) and I had further comment about his very able cross-examination (A3092-3093).

Defendants' brief states that I and Mr. Muh authorized Berkowitz's letter to Rafkind (MB-119). Muh testified that he thought (emphasis added) I had seen and approved the letter (A3359). I testified that I did not see the Rafkind letters until "some time after they were written" (A3020). There was no other testimony about this point.

Defendants frequently mention that Gross, Bleich,

Donoghue and all Limited Partners would be paid in full on liquidation. They rely on Judge Owen's finding that, "Removing these items from the Corporation's balance sheet (which I earlier pointed out was not in evidence), as Lauterbach demonstrated was proper, I conclude that there would have been sufficient assets in the Partnership as of February 11, 1971 to pay Bleich and Donoghue each the return of their \$75,000 investment...." (P1-530). The Lauterbach adjustments have nothing to do with the company's ability to pay. For example, Newburger had a contractual obligation to pay Atlas \$411,000 irrespective of what Mr. Lauterbach might think about Gross sharing the charges. Putting an asset on the books for recovery of Unincorporated Business Taxes, which event never occurred, would not provide one penny of additional cash or borrowing power. The two items, Atlas and Unincorporated Taxes, accounted for more than 60% of the dollar total from the 15 adjustments. And as to the other adjustments, if they were accepted in their entirety, the company's cash position before and after the adjustments would be exactly the same \$133,925 (E952) and it is arguable whether its borrowing power would be at all increased.

Defendants make much of debt forgiveness and they

discuss it in sweeping terms. For example, defendants say the Subordinated Lenders gave up their claims against the partnership (MB-31). That is incorrect as the Subordinated Lenders' signature page to the Transfer Agreement clearly shows (E83). Furthermore, defendants neglect that neither I nor the Corporation could forgive partners' debts, if there were such debts (A2859, 2860). It was an authority we did not possess, and any such forgiveness emanating from us would be meaningless. Indeed, the size of notes that the Corporation received from the General Partners related to their individual deficits, and certain General and Limited Partners did exchange releases, but the releases did not come from me or the Corporation.

Defendants argue at length that there was a fiduciary duty owed to them. But I did not have a fiduciary relationship with them. I was employed as a consultant to aid in solving the economic problems of the entire company. The prevailing decision of Newburger's Executive Committee and its majority in number and interest of capital contributors was to reorganize, as evidenced by the ultimate signing of the Transfer Agreement. I also was one of several acquirers, and the record does not disclose any wrongful or illegal conduct on my part or any knowing aid to the breach of a fiduciary relationship.

II

IT WAS NOT THE INTENT OF THE
PARTNERSHIP TO BESTOW TITLE TO
THE "IN KIND" SECURITIES TO MR.
GROSS OR ANY OTHER PARTNER.

At trial there was the following exchange
between Judge Owen and me (A2969-2971):

"THE COURT: Mr. Risher, let me ask
you about this letter.

As you read this, Mr. Kayne
acknowledges that there was a vote to
distribute the warrants to certain
parties.

THE WITNESS: Yes.

THE COURT: I take it that you under-
stood that meant that as of the time of
that vote, that the warrants were -- we
lawyers use the words "equitable title",
but the warrants really become the property
of those partners who had been voted to
distribute them. That becomes theirs sub-
ject to delivery?

THE WITNESS: No, sir, I don't agree
with that.

THE COURT: What does that mean to you?

THE WITNESS: Okay, it means this to me:
I can see a very real problem in a partner-
ship that received warrants for having done
an underwriting, which is the way these war-
rants were received, and then at some later
date, two or three years hence, those war-
rants being exercised and sold, and at date

one, the partnership would have a particular configuration, and at date two, it would have a different configuration. Perhaps it would have totally different partners or many different partners, so the purpose of the entire exercise, in my opinion, was merely to say that we are determining ownership of these warrants as of the date of the underwriting, not as of the date they are exercised and sold (emphasis added). The same kind of reasoning would apply to all of the assets of the company, securities positions, furniture, fixtures, and so.

THE COURT: Let me just focus your attention on some language. Bob Stern wishes to distribute various warrants to partners. That means to hand them out. That means that in clear and simple English, does it not? He wants to distribute warrants to partners. Isn't that what it means?

THE WITNESS: That is what Mr. Kayne said, but I don't think that is what Mr. Stern had in mind.

THE COURT: That's what you read?

THE WITNESS: That is what I read.

THE COURT: As a fact, and that is what those words mean to the reader of the English language, that he wants to take certain warrants and give them to partners?

THE WITNESS: But I believe --

THE COURT: Wait. Isn't that what the language means? As a graduate of college and high school, you studied

English. That's what the language means, right? That is what he says he wants to do?

THE WITNESS: I suppose so. I suppose so."

Unfortunately, I was not able at the time to direct the Court's attention to Plaintiff's Exhibit 87, the minutes of the August 11, 1970 Executive Committee meeting where this topic occurred, which were in evidence and say as follows (E216):

"Assignment of vested interest in 'paper' accumulated since 1/1/69: It was decided that interest in 'paper' is the property of each general partner in relationship to his interest in the profits and losses of the firm at the time the 'paper' was earned not at the time it will be disposed of." (emphasis added)

Even if the intent of the Stern letter had been to bestow rather than fix ownership, no actual distribution of this paper could be made without violating the terms of the Partnership Agreement.

Robert Stern's August 24, 1970 letter to the partners in which the alleged distribution was made says, "The Executive Committee has determined that you

therefore own an interest in these securities ... as defined in paragraph 6.3 of the Articles of Limited Partnership as of January 1, 1969." (E848). Paragraph 6.3 says, "A float equal to fifteen (15%) of one hundred (100%) of the Net Profits of the partnership may be distributed among the General Partners as the Executive Committee may from time to time determine." (E433). But, there were no Net Profits, and any distributions would have violated this provision of the Partnership Agreement and 6.2, which provides for Limited Partners sharing in profits. Year to date results for Newburger were a loss of \$1,371,120 through August 30, 1970, and in the month of August, 1970, the firm lost \$78,089 (E929). For the year 1969, Newburger lost more than \$1 million (E197).

My initial brief had at pp. 13 an incorrect page reference. The sentence and correct page reference follow: I testified that I ignored the letter, did not act on it in any fashion, and disagreed with the Stern letter attached to Kayne's (A2959-2974).

III

MR. GROSS' CAPITAL ACCOUNT WAS
CORRECTLY VALUED BY PEAT MARWICK
DESPITE ARGUMENTS TO THE CON-
TRARY IN DEFENDANTS' BRIEF.

The Partnership Agreement says the following:

"VIII Computing and Paying The Interest of
A Former Partner

8.1 The interest of a former partner or the legal representatives of a deceased or adjudicated partner shall be computed and paid out as follows:

(a) omitted

(b) The former partners interest as at the previous January 2nd shall be taken as a basic figure. To that figure shall be added the following:

... the partners share of the profits of the business, if any, to the effective date. There shall be subtracted ... the partners share of losses, if any, from January 2nd last to the effective date. Profits or losses shall be computed by multiplying the net income (or loss) for the year by that fraction whose numerator is the gross income for the year to the effective date and whose denominator is the gross income for the year...."
(Above emphasis added.) (E441, 442)

"VI Profits and Losses

6.1 In establishing the annual Net Profits of the business, the General Partners shall provide ... such accruals

and reserves as to them seem proper and necessary." (Above emphasis added) (E431, 432)

It is important for the Court to first note that an audit is not required under the terms of the Partnership Agreement as defendants' brief incorrectly implies (MB-111). There was no outside audit at year end 1969 (A3078, 3079). It was the obligation of the General Partners to determine reasonable accruals and reserves. The fact that Peat Marwick performed an additional outside audit merely confirms the work of the General Partners. (That is the normal function of an outside auditor. Management furnishes the information and the auditor attests to its accuracy through his certification. This is true whether it's General Motors or Newburger, Loeb.)

Defendants' brief argues that Mr. Gross was chargeable with losses "up to the day of withdrawal" (MB-111). Such a position simply ignores the complete formula carefully spelled out in Paragraph 8.3 of the Partnership Agreement. Defendants' brief speculates that the purpose of the formula was to avoid audit, at

the effective date. That speculation must be wrong since audit for Partnership Agreement purposes is not required at any time. A better speculation as to the reasons for the formula would be that it is just plainly fairer to include an entire year's results and to avoid the problem that occurred here of a partner resigning just before the company incurred major costs. Actually, defendants' brief takes both sides of the issue. When arguing sharing of losses they emphasize "up to the day of withdrawal" (MB-111). When arguing fiduciary obligations to Gross they mention that, "until the end of the Calendar Year 1970 Gross would continue to share in an allocated portion of the profits and losses...." (MB-52). Perhaps due to the absence of a transcribed record for the Court's use (P1-511), Judge Owen did not accurately know when Gross withdrew. The Court's Opinion has Gross giving notice of withdrawal in July, 1970, when in fact Gross gave notice August 31, 1970, to be effective September 30, 1970 (P1-516; E856).

Defendants' brief offers Mr. Lauterbach as

an expert who testified, "that it was improper to charge Mr. Gross with a share of these extraordinary items and writeoffs occurring after September 30, 1970" (MB-111). Whether Mr. Gross is chargeable after September 30th is a legal question having to do with the interpretation of the Partnership Agreement not an accounting question. Mr. Lauterbach is an accountant, not a lawyer. Even if the charges are extraordinary, the intent of the Partnership Agreement seems clearly to be that if the charges are properly chargeable to the year of withdrawal then the withdrawing partner is responsible for his share of them -- no matter whether they pre or post-date his effective date of withdrawal. Even defendants' brief recognizes that the charges for the firm were in accordance with customary accounting procedures. Defendants say, "When asked whether this was in accordance with customary accounting procedures, Alvey very carefully stated 'for the firm, yes' (A4135) (emphasis added)." (MB-114). Defendants' brief goes on to say: "He (Alvey) specifically acknowledged that the determination of the loss of the partnership as a whole can be quite a different matter from the determination of the share of loss

of a particular withdrawn partner (A4149-4150)" (MB-115). I agree; the firm first determines the profit or loss for the partnership as a whole, in accord with Paragraph 6.1, and then apportions the profit or loss among the partners in accord with Paragraph 8.3. And continuing, defendants' say, "He specifically stated that Peat Marwick did not purport to determine whether Gross should be charged with rent settlements actually paid in 1971 or 1972 (A4150)." Again, Mr. Alvey is correct. Alvey recognized that this question was a legal question having to do with the Partnership Agreement. Lauterbach seemed not to recognize that he was making legal interpretations in his adjustment of the balance sheet. There is no question that proper accounting treatment required that the settlement with Atlas be immediately charged in full to 1970 results no matter when it was paid. The charge was properly made in Newburger's November, 1970 statement (E971, 974). The topic of buying out of the Atlas lease came up as early as March 26, 1970 (E321). The original write-offs of Unsecured Receivables, the James Anthony Liquidation,

and Reserves and Write Offs for losses on New-Loeb Sports (the Buffalo Braves) also occurred in the November, 1970 statement (E970-975). Mr. Gross was personally liable on substantial 6 figure loan guarantees (A2470) for the Buffalo Braves, and he takes partial credit for the sale of the team (TR3898). Yet, just as in the Atlas lease situation, he has the temerity to resist taking his pro-rata share of the losses on the team in Items 4 and 9 in Lauterbach's adjustments (E873).

Defendants charge and Judge Owen decided that misinformation was furnished to Peat Marwick. But what could the misinformation have been? Was it misinformation to disclose that Newburger made a settlement with Atlas Realty in November, 1970 requiring that more than \$400,000 be paid to Atlas, of which \$200,000 was actually paid to Atlas in November? (My initial brief on pp. 35 incorrectly states the amount paid in 1970 as \$178,705 due to my failure to refer to the accurately stated note on E-974). Was it misinformation to disclose the other write-offs and reserves established by Newburger? Was it misinformation

to disclose that under the terms of the Partnership Agreement in Paragraph 8.3 Mr. Gross was required to take his pro-rata share of these charges? Interestingly, Mr. Gross does not want to share in valid charges to 1970 results occurring subsequent to his withdrawal date, but does want to share in recovery of unincorporated business taxes, an event which never occurred (A3684). Unfortunately, Judge Owen made just such an award.

SUMMARY

The unreal view that I was a member of a conspiracy to breach a fiduciary obligation owed by the partners of Newburger, Loeb & Co. to Charles Gross, Mabel Bleich and Jeanne Donoghue is typified by Mr. Mandel's claim that I acted wrongfully in relation to the calculation of defendants' capital accounts. I did not direct the calculations. I did not conspire to aid others to cheat Gross, Bleich and Donoghue by undervaluing their capital accounts. Their accounts were calculated upon the basis of real losses attributable to the 1970 partnership for which defendants were pro-

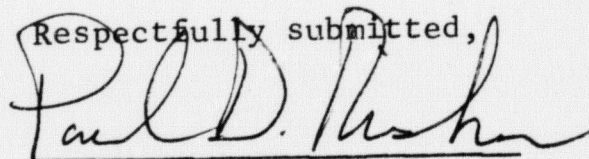
portionately liable based upon the Partnership Agreement. To say that I am a co-conspirator because of a treatment of losses with which defendants disagree would have merit only if it were shown that there was no basis for the method used. Defendants' argument makes all those who disagree with them liable for the difference as co-conspirators, regardless of the correctness and good faith of their views.

I did not take part in a conspiracy with regard to any of the other acts relevant to this case. Each and every act I performed was conceived in good faith and carried out in an open and honest manner.

CONCLUSION

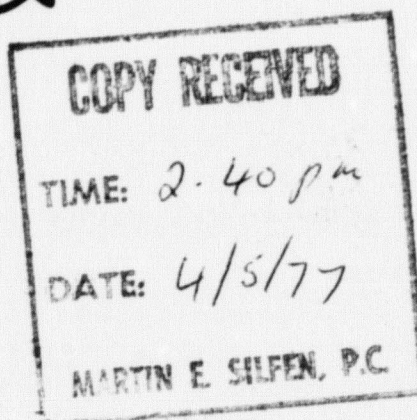
All claims against Paul D. Risher should be dismissed.

Respectfully submitted,

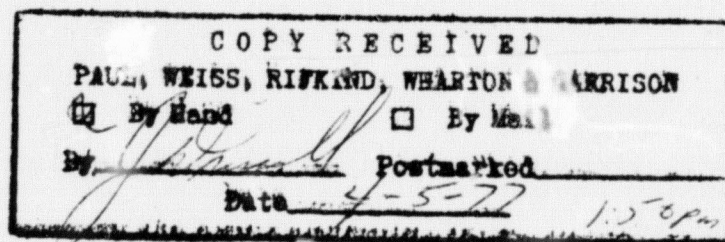
A handwritten signature in dark ink, appearing to read "Paul D. Risher", written over a horizontal line.

PAUL D. RISHER, pro se
Additional Defendant on
Counterclaims-Appellant-
Cross-Appellee

Copy Rec'd 2:50 PM
4/5/77
John W. Englund & Associates



Received
Laurie Parisi
for Leon B. Bowstein
April 5, 1977 2:40



Sharon Sanders
received for Donald H. Shaw
4/5/77

COPY RECEIVED
4/5/77
Robert L. Purdy
Atty. - Pro. Sec.

COPY RECEIVED

April 5, 1977

GOLD, FARRALL & MARRS

BY Alma Medina

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 :ss.:
COUNTY OF NEW YORK)

PAUL D. RISHER, being duly sworn, deposes and says that deponent is Additional Defendant on Counter-claims-Appellant-Cross-Appellee pro se in this action, is over 18 years of age, and resides at 22 Pheasant Lane, Stamford, Connecticut. On April 5, 1977, deponent served the within Reply Brief upon the following attorneys:

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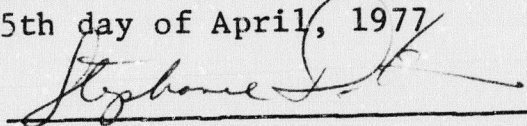
MARTIN E. SILFEN, P.C. & BONDY & SCHLOSS, ESQS.
545 Fifth Avenue
New York, N.Y. 10017 and

GOLD, FARRELL & MARKS, ESQS.
595 Madison Avenue
New York, N.Y. 10022
Attorneys for Additional Defendant Fred Kayne

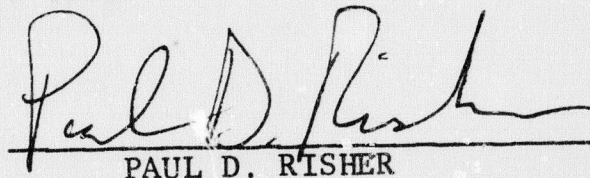
OSMOND K. FRAENKEL, ESQ.
Attorney for Additional Defendants on Counter-
claims, Newburger, Loeb & Co., Andrew M. Newburger,
Robert L. Newburger, Robert L. Stern, Richard D.
Stern; Richard D. Stern, Walter D. Stern and Robert
L. Stern as Executors under the Last Will and
Testament of Leo Stern, deceased; & Sanford Roggenburg
120 Broadway
New York, N.Y. 10005

the addresses designated by said attorneys for that purpose
by depositing true copies of same enclosed in post-paid
properly addressed wrappers, in an official depository under
the exclusive care and custody of the United States Postal
service within the State of New York.

Sworn to before me this
5th day of April, 1977



STEPHANIE D. KAHN
Notary Public, State of New York
No. 31-431381
Qualified in New York County
Term Expires March 30, 1979


PAUL D. RISHER